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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

|                        |   |
|------------------------|---|
| Proceeding no.         | 91278253  |
| Party                  | Defendant<br>Letus Corporation  |
| Correspondence address | LETUS CORPORATION<br>9404 SE SUN CREST DRIVE<br>HAPPY VALLEY, OR 97086<br>UNITED STATES<br>Primary email: gt@letus35.com<br>Secondary email(s): notifications@trademarkengine.com<br>503-334-6587 |
| Submission             | Answer  |
| Filer's name           | Alexandra Berkowitz, esq  |
| Filer's email          | rex@t-rexlaw.com, sasha@t-rexlaw.com  |
| Signature              | /Alexandra Berkowitz/   |
| Date                   | 10/11/2022  |
| Attachments            | 2022.10.11 answer.pdf(215165 bytes )  |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Application Ser. No. 97079111

Applicant: Letus Corporation

Mark: MIRACHLOR

|  |   |                         |
|--|---|-------------------------|
| King Technology, Inc.                    | ) |                         |
|  | ) |                         |
| Opposer,                                 | ) |                         |
|  | ) |                         |
| vs.                                      | ) | Opposition No. 91278253 |
|  | ) |                         |
| Letus Corporation                        | ) |                         |
|  | ) |                         |
| Applicant.                               | ) |                         |
| <hr style="border: 0.5px solid black;"/> |   |                         |

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**APPLICANT’S ANSWER**

In response to Opposer King Technology, Inc’s (“Opposer”) Notice of Opposition, Applicant Letus Corporation (“Applicant”) responds as follows:

Applicant denies each and every allegation of the Notice of Opposition unless it is expressly admitted herein:

- 1) Admitted to the extent that the information listed appears to be the same information listed in Applicant’s Application.
- 2) Admitted to the extent that the information listed appears to be the same information listed in Applicant’s Application.
- 3) Applicant is without sufficient knowledge or information to form a belief as to the

allegations of paragraph 3, and therefore, denies the same.

4) Paragraph 4 calls for a legal conclusion to which no response is necessary. To the extent a response is necessary, Applicant denies the allegations.

5) No response is required to Opposer's paragraph 5.

6) Applicant is without sufficient knowledge or information to form a belief as to the allegations of paragraph 6, and therefore, denies the same.

7) Applicant is without sufficient knowledge or information to form a belief as to the allegations of paragraph 7, and therefore, denies the same.

8) Paragraph 8 calls for a legal conclusion to which no response is necessary. To the extent a response is necessary, Applicant denies the allegations.

9) Applicant is without sufficient knowledge or information to form a belief as to the allegations of paragraph 9, and therefore, denies the same.

10) Paragraph 10 calls for a legal conclusion to which no response is necessary. To the extent a response is necessary, Applicant denies the allegations.

11) Paragraph 11 calls for a legal conclusion to which no response is necessary. To the extent a response is necessary, Applicant denies the allegations.

12) Paragraph 12 calls for a legal conclusion to which no response is necessary. To the extent a response is necessary, Applicant denies the allegations.

13) Paragraph 13 calls for a legal conclusion to which no response is necessary. To the extent a response is necessary, Applicant denies the allegations.

#### **AFFIRMATIVE DEFENSES**

1) First Affirmative Defense: There is no likelihood of confusion, mistake, or deception between Opposer's Marks and Applicant's Mark.

- a. Specifically, Applicant's Mark and Opposer's Marks differ in appearance, sound, connotation, and commercial impression.
- i. The Marks begin with different letters and sounds and contain a different number of syllables, meaning they each have a distinct cadence when spoken. It has been repeatedly found that consumers are generally more inclined to focus on the first word, prefix, or syllable in any trademark or service mark. *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) ("it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered" when making purchasing decisions).
  - ii. Applicant's mark is a unitary term MIRACHLOR, sounding like "miracle," while Opposer's mark is clearly a composite mark combining two separate terms, "smart" and "chlorine" into the compound "SMARTCHLOR." In both cases, chlorine compounds are components of the goods.
    1. Although as a general rule a Court should not dissect a trademark and consider its component parts, when a portion of a trademark is a common or generic term, the Court may consider the common element separately from the unique portion of the trademark. *See Upjohn Co. v. Schwartz*, 246 F.2d 254, 262 (2d Cir. 1957); J. McCarthy, *Trademarks and Unfair Competition*, § 23:15(F) n. 15; 23:15(G) p. 87-90 (2d ed. 1984).
    2. Of particular note: "The "RIN" ending contained in both ECOTRIN and ENCAPRIN is a derivative of the generic term


"aspirin" and as such cannot be the basis for a likelihood of confusion. If the rule were otherwise, the first user of the generic suffix could enjoin all junior users. Clearly, this is not the case as the majority of over-the-counter analgesics end in "RIN" or "IN". When the common element of two trademarks is a generic term, the likelihood of confusion is reduced, as the public has come to expect that element on different products. J. McCarthy, Trademarks and Unfair Competition, § 23:15(F) p. 88 (2d ed. 1984). In comparing the remaining prefixes, ECOT and ENCAP, the Court finds that there is no more likelihood of confusion between them than there is between ECOT and the prefixes on other well-known analgesics on the market, for example, the EXCED prefix from EXCEDRIN and the EMPI prefix from EMPIRIN. No evidence was presented that the average consumer could not differentiate between ECOTRIN and ENCAPRIN simply on the basis of their appearance." *Smithkline Beckman Corp. v. Proctor Gamble Co.*, 591 F. Supp. 1229 (N.D.N.Y. 1984). This clearly applies to the CHLOR ending in the present case. Hence, the proper comparison is between the beginning phrases "MIRA" and "SMART" which are entirely different in all categories of consideration.

- b. Moreover, Opposer's goods and Applicant's goods do vary quite significantly.

Opposer sells pool chemicals. In contrast, Applicant's compound is in use for cosmetic and wound-care purposes. Although Opposer claims its goods are not limited by channels of trade or classes of consumers, there is an extremely obvious limitation: the goods are only purchased by pool owners. This necessarily limits Opposer's purchasers in age, wealth, and even geographic location. Applicant's product, however, can be used by anyone regardless of age, location, or economic status.


- c. Finally, there are a huge number of third party registrations for "-CHLOR" formative marks for chlorine-compound related products. This indicates that CHLOR is a generic reference to the chlorine molecule, that Opposer exists in a crowded market, and Opposer's scope of protection should be limited. A

representative, non-exhaustive list of these registrations is as follows:

- i. ELECTRICHLOR (Reg. No. 6793429) for Sodium hypochlorite generators; hypochlorous acid generators in Class 011.
- ii. ELECTRICHLOR (Reg. No. 6761584) for Sodium hypochlorite in Class 001.
- iii. PURE CHLOR (Reg. No. 6715100) for Disinfectants and sanitizing preparations for use in cleaning hard surfaces in Class 005.
- iv. PURECHLOR (Reg. No. 4709880) for Water treatment systems, namely, an in-line plumbing conversion cell inserted into the pipes of pool system, for converting salt in the water to chlorine for disinfecting the pool water in Class 011.
- v. ECOCHLOR (Reg. No. 6345741) for Ship ballast water treatment system comprised of chlorine dioxide generator, control apparatus, and chemical tanks in Class 011.
- vi.  (Reg. No. 3241573) for Ship ballast water treatment system comprised of chlorine dioxide generator and water filtration unit, control apparatus, piping apparatus, and pre-cursor chemical tanks in Class 011.
- vii. RETROCHLOR (Reg. No. 6348885) for swimming pool chlorinating apparatus in Class 011.
- viii. MULTI-CHLOR (Reg. No. 5204762) for Chemicals for use in water treatment in Class 001; Sanitizing preparations for commercial, hospital, and agricultural use; Pesticides in Class 005.
- ix. ICHLOR (Reg. No. 5247755) for Electrolytic chlorinator comprising a

power supply, electrolytic cell, and flow and salinity sensors for swimming pools and spas in Class 009.



- x. (Reg. No. 4649022) for Water treatment equipment, namely water purification units in Class 11.
- xi. MERICHLOR DEHALOS (Reg. No. 5201188) for Microbial dechlorinator for the dichlorination of chlorinated aliphatic compounds as part of the bioremediation of environmentally contaminated property in Class 001.
- xii. IV CHLOR (Reg. No. 4946773) for Sodium hypochlorite in Class 001.
- xiii.  (Reg. No. 4978028) for All purpose disinfectants for inhibiting growth of bacteria; Antiparasitic preparations; Antiseptics; Chemical preparations to treat mildew; Depuratives for the body; Disinfectants for chemical toilets; Disinfectants for hygiene purposes; Germicides; Pharmaceutical preparations for use in chemotherapy; Sterilising preparations and substances in Class 005.
- xiv. SCICHLOR (Reg. No. 4115647) for Water treatment equipment, namely, sodium hypochlorite water generators for converting brine water to chlorinated water in Class 011.
- xv. HYDROCHLOR (Reg. No. 4290040) for Whirlpool and spa deodorizer in Class 005.
- xvi. AMERICHLOR (Reg. No. 4354702) for Granular sanitizing chemicals,

namely, granulated chlorine, for chlorination and sanitation of water for swimming pools, potable water, waste water and industrial uses in Class 001.

- xvii. VERSACHLOR (Reg. No. 4007430) for Solid sanitizing chemicals, namely, chlorine tablets, for chlorination and sanitation of water for swimming pools, potable water, waste water and industrial use, charged in dispensing containers in Class 001; Water treatment equipment, namely, sanitizing units for use with chlorine tablets, for industrial use, for potable water and for swimming pools in Class 011.
- xviii. ENTROCHLOR (Reg. No. 5229702) for Medical and surgical dressings in Class 005.
- xix. H-CHLOR (Reg. No. 4518543) for Medical cleansers for skin and wounds containing sodium hypochlorite; Pharmaceutical preparations for wounds containing sodium hypochlorite in Class 005.
- xx. VALACHLOR (Reg. No. 4538181) for pharmaceutical preparations for the treatment of lymphomas, non-Hodgkins lymphomas, cutaneous T cell lymphomas, mycosis fungoides in Class 005.
- xxi. PRO CHLOR (Reg. No. 4926533) for Chemicals for the treatment of water and wastewater; Chemicals for use in purification of water; Chemicals for use in purifying water; Water purifying chemicals for swimming pools; Water treatment chemicals for use in swimming pools and spas in Class 001.
- xxii. PALAU'CHLOR (Reg. No. 4715780) for Laboratory chemicals, namely



reagents for use in chemical synthesis in Class 001.

- xxiii. VITA-D-CHLOR (Reg. No. 3969508) for Chemicals for industrial purposes in Class 001.
- xxiv. ECONO-CHLOR (Reg. No. 4344115) for Water treatment chemicals for use in swimming pools and spas in Class 001.
- xxv. HYPO-CHLOR (Reg. No. 3226832) for Sterile sodium hypochlorite for use as a decontaminate and as a disinfectant in clean rooms in Class 005.
- xxvi. UNICHLOR (Reg. No. 3348052) for Providing economic information in the field of construction and operation of chlor-alkali plants and processes for the manufacture of chlorine, caustic, and hydrogen and subsequently sodium hypochlorite, ferric chloride, calcium hypochlorite, hydrochloric acid, and other chlorine derivatives; providing product information in the field of equipment for chlor-alkali plants in Class 035.
- xxvii. VALUE CHLOR (Reg. No. 2167634) for Chlorine for use in swimming pools in Class 001.
- xxviii. DREWCHLOR (Reg. No. 1254199) for Chemicals – namely, a precursor material to generate chlorine dioxide for use in water handling systems in Class 001.
- xxix. DURACHLOR (Reg. No. 0958369) for Organic chlorine concentrate for swimming pools in Class 001.
- xxx. CHLOR NOMORE (Reg. No. 6757530) for swimming pool sanitizer; algacides in Class 005.
- xxxi. ECHLOR\*TEST (Reg. No. 5925696) for Kit consisting primarily of

electronic analyzers for testing and analyzing the presence, absence, or quantity of surface chloride contamination in Class 009.

- xxxii. CHLOR\*TEST (Reg. No. 5925695) for Chemical test kits for testing chloride ion contamination not for medical use in Class 001.
- xxxiii. CHLORSYNC (Reg. No. 6025653) for Salt chlorine generators for pools and spas in Class 011.
- xxxiv. CHLOR NIX (Reg. No. 5212929) for Chemical additives for reducing chlorine levels in the water used in swimming pools and spa pools in Class 001.
- xxxv. CHLOR BRITE (Reg. No. 5609982) for Chemicals used to sanitize and treat water used in swimming pools and spas; shock treatment chemicals for use in swimming pools and spas; granular chlorine used to sanitize and treat water used in swimming pools and spas in Class 001.

2) Second Affirmative Defense: Any and all acts alleged to have been committed by Applicant were performed with lack of knowledge and lack of willful intent.

October 11, 2022

Respectfully submitted,  
*/s/ Alexandra Berkowitz, Esq.*

Rexford Brabson  
Alexandra Berkowitz  
T-Rex Law, P.C.  
Attorneys for Applicant  
7040 Avenida Encinas #104-333  
Carlsbad, CA 92011

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing APPLICANT'S AMENDED ANSWER is being electronically mailed to the following address:

MICHAEL RAY  
BRIGHTWORK LAW GROUP, LLC  
5139 PINE BRANCH POINT  
ATLANTA, GA 30338-4024  
UNITED STATES  
mer@brightlaw.us, mer@brightlaw.us

*/s/ Alexandra Berkowitz*

Rexford Brabson  
Alexandra Berkowitz

October 11, 2022